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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5053 OF 2004

Shri Swaroopchand Jain
& Anr.

...Applicants.

V/s.

The State of Maharashtra
and Ors.

...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO. 5054 OF 2004

Shri Swaroopchand Jain & Anr.

...Applicants.

V/s

The State of Maharashtra & Ors. ...Respondents.

Mr. Subhash Jha i/b Law Global for the applicants.
Mrs. V. D. Jaisingh for respondent No.2.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 16th March, 2005

P.C.:

1. Heard the learned Counsel for the applicants and
the learned Counsel for respondent No.2.

2. Both these applications can be disposed of by the
common order since the applicants are the same and the
point of law raised in both these applications is also
identical.

3. Applicants are challenging the order of issuance
of process by the Metropolitan Magistrate on a

complaint filed by the complainant under section 138 of the Negotiable Instruments Act. In Criminal Application No. 5053 of 2004 it is stated that accused No.3 issued a cheque for an amount of Rs 25 lakhs in favour of respondent No.2 towards payment of principal amount. This cheque was dishonoured. Hence the complaint was filed. The application was made for recall of process in the Trial Court. However, it was rejected by the Trial Court by order dated 16/2/2004. Thereafter, Criminal Revision Application was filed in the Sessions Court. However, the Sessions Court dismissed the Criminal Revision Application relying on the judgment of the Supreme Court in the case of Adalat Prasad.

4. It is submitted by the learned Counsel appearing for the applicants that pursuant to the agreement dated 4/7/1996 M/s SKG Solvex Limited was taken over by the new management headed by Shri Hirachand Salecha and Shri Satyendra Mehta and the applicants ceased to be directors of M/s. SKG Solvex Ltd. with immediate effect. The new management has filed Form 32 with the Registrar of Companies on 11/10/1996 indicating therein that the applicants had resigned from the directorship of M/s SKG Solvex Limited on 28/3/1996. It is submitted that the Circulars were issued to all

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the share holders to that effect. It is further submitted that the cheque in question was a post-dated cheque. It was issued in favour of respondent No.2. It is further submitted that the respondent No.2 was informed about the resignation of the existing directors of the Company. It is submitted that the applicants were not in-charge of the day-to-day affairs and the management of the Company.

5. Respondent No.2 have filed their reply in which it is stated that the agreement dated 4/7/1996 is a Deed of Undertaking Cum Indemnity though it is termed as M.O.U. It is further stated in the reply that though in the said application it is stated that the applicants 1 and 2 resigned on 28/3/1996, Form 32 has been filed on 11/10/1996. It is submitted by the learned counsel appearing on behalf of respondent No.2 that if the applicants had resigned on 28/3/1996, the question of signing of document dated 4/7/1996 as directors would not arise. Therefore, there was a doubt regarding validity of Form 32. It is submitted that the cheque was issued on 27/5/1996. The cheque was post-dated on 27/5/1996 and the date of 25/8/1996 was put on the cheque. It is submitted that the cheque was issued prior to the document dated 4/7/1996 and, therefore, they were liable for dishonour of

cheque. It is further submitted that the document dated 4/7/1996 itself shows that the applicants were in-charge of the day-to-day affairs of the Company. It is further submitted that the documents which were produced before the Magistrate were all typed copies and not the original copies. It is further submitted that Form 32 was submitted on 11/10/1996 before the Registrar of Companies and it was signed by Shri Dhiraj Jain, the director of the Company. However, as per the records, Shri Dhiraj Jain also resigned as director on 27/7/1996 which is reflected on page 73 of the application. It is submitted that, therefore, the director who resigned on 27/7/1996 from the Company has no power to file Form 32. It is, therefore, submitted that the documents submitted by the applicants are bogus and fabricated only to evade themselves from responsibility and liability of paying outstanding amount due to respondent No.2.

6. In my view, there is substance in the submissions made by the learned Counsel appearing on behalf of respondent No.2. All the documents referred to in the affidavit in reply clearly create a doubt regarding the authenticity about the resignation of the applicants as directors. This issue, therefore, cannot be resolved at this stage and it is only after

the evidence is led by both the parties, this question can be considered and decided by the Magistrate. The submissions of the learned counsel appearing on behalf of the applicants, therefore, cannot be accepted. All questions, however, are kept open. Trial Court to decide the trial as expeditiously as possible.

7. In Criminal Application No. 5054 of 2004 the facts are almost identical and the accused No.3 had issued the cheque dated 3/9/1996 drawn on the State Bank of Indore for an amount of Rs 18,50,000/- in favour of respondent No.2 which was dishonoured and information was given by the Bank by their Memo dated 16/1/1996. A complaint was filed. Similar defence as the one taken in Criminal Application No.5053/2004 was taken by the applicants. For the reasons stated hereinabove, the contentions of the learned Counsel appearing for the applicants cannot be accepted.

8. In the result, both the Criminal Applications are dismissed.

V.M. KANADE, J.